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Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to members of the General Assembly the interim report submitted by Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Assembly resolution 63/242.

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Interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

The present report to the General Assembly is submitted pursuant to Assembly resolution 63/242 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.

In chapter II of the report, the Special Rapporteur makes reference to the Durban Review Conference, which was held from 20 to 24 April 2009, in Geneva. In chapter III, the Special Rapporteur describes the activities carried out in the framework of his mandate. As such, it refers to country visits — including by the former mandate holder — and press releases. Chapter III also refers to thematic issues addressed by the Special Rapporteur through his participation in conferences, seminars and other meetings since his last report to the General Assembly (A/63/339). Those issues include incitement to racial or religious hatred, poverty, genocide, and discrimination based on descent. Finally, the Special Rapporteur presents a number of conclusions and recommendations relating to the Durban process and to the above-mentioned thematic issues.

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I. Introduction

1. The mandate of the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance was created by the Commission on Human Rights in its resolution 1993/20 and further refined in its resolution 1994/64. In March 2008, the Human Rights Council reviewed, rationalized and improved the mandate. As a result, the Human Rights Council adopted resolution 7/34, which extended the mandate of the Special Rapporteur for a period of three years and set out the terms of reference in paragraphs 2 and 3 of the resolution.

2. The present report is submitted pursuant to General Assembly resolution 63/242 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.

3. Chapter II of the report is devoted to the Durban Review Conference, held from 20 to 24 April 2009 in Geneva. Chapter III describes the activities carried out in the framework of the mandate. As such, it refers to country visits — including by the former mandate holder — and press releases. Chapter III also refers to thematic issues addressed by the Special Rapporteur through his participation in conferences, seminars and other meetings since his last report to the General Assembly (A/63/339). Those issues include freedom of expression and incitement to racial or religious hatred, poverty, genocide, as well as discrimination based on descent. Finally, the Special Rapporteur presents a number of conclusions and recommendations relating to the Durban process and to the above-mentioned thematic issues.

II. Durban Review Conference

4. The first year of appointment of the Special Rapporteur was obviously very much marked by the Durban Review process and the holding of the Durban Review Conference in April 2009. Consequently, the Special Rapporteur devoted a significant chapter to the Durban Review Conference in his annual report submitted to the eleventh session of the Human Rights Council (A/HRC/11/36). During the Durban Review process, he often stressed that the Review Conference constituted a unique opportunity to rebuild strong international consensus and mark the renewal of the international engagement in the struggle against racism. In that respect, he emphasized that the Durban Review Conference should be seen as the beginning of a new era of international mobilization in the fight against all forms of racism, rather than the culmination of the Durban Review process.

5. The Special Rapporteur was particularly pleased that the outcome document was adopted consensually by all participating States. While the Special Rapporteur regretted that 10 States had decided not to participate in the Review Conference, he recommended that those States publicly acknowledge their support to the outcome document.

6. On the question of freedom of expression and the fight against racism, which was key during the negotiations, the Special Rapporteur noted with satisfaction that the text agreed upon represents a landmark in the way the United Nations human rights system will in the future approach this issue. The Special Rapporteur welcomed the fact that the outcome document referred to the language of

international human rights standards contained in the International Covenant on Civil and Political Rights and in the International Convention on the Elimination of All Forms of Racial Discrimination.

7. Now that the outcome document of the Durban Review Conference has been adopted, the Special Rapporteur hopes that the momentum gained during the Durban Review process will retain its strength. He would like to strongly emphasize that pledges and commitments made in the outcome document be effectively implemented by all States, which retain the primary responsibility in this respect. Racism is still pervasive around the world and appropriate legislation, institutions and policies are more than ever necessary to fight against this scourge.

8. In the implementation of his mandate, the Special Rapporteur intends to use the outcome document of the Durban Review Conference as a blueprint and a theoretical framework for analysing issues relevant to his mandate during country visits, and in other regular activities. In this view, the Special Rapporteur submitted in his annual report to the Human Rights Council (ibid.) a table listing the action-oriented commitments made by States and some initial indicators to monitor performance to meet those commitments. He would like to recommend that States use similar tools in order to identify concrete measures and to establish a road map for the implementation of the outcome document of the Durban Review Conference.

III. Activities of the Special Rapporteur

A. Country visits

9. Country visits constitute an important opportunity for the Special Rapporteur "to gather, request, receive and exchange information and communications with all relevant sources, on all issues and alleged violations falling within the purview of his mandate, and to investigate and make concrete recommendations, to be implemented at the national, regional and international levels, with a view to preventing and eliminating all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance", in accordance with the mandate entrusted to him by the Human Rights Council in resolution 7/34.

10. Following his appointment in August 2008, the Special Rapporteur sent formal requests to visit Bangladesh, the Plurinational State of Bolivia, Bosnia and Herzegovina, Germany, India, Israel, Malaysia, Mexico, Nepal, South Africa, the Sudan and the United Arab Emirates. The Special Rapporteur would like to acknowledge the letters of invitations extended to him by the Plurinational State of Bolivia and by Bosnia and Herzegovina. While he has not been able to honour these invitations yet, the Special Rapporteur hopes that he will be able to do so in the near future.

11. In the following paragraphs, the Special Rapporteur would like to inform the General Assembly of the visit carried out by the former mandate holder to the United States of America, of his first country visit carried out to Germany, and of his upcoming visit to the United Arab Emirates.

1. Mission to the United States of America by the former mandate holder

12. The former mandate holder visited the United States from 19 May to 6 June 2008 at the invitation of the Government. The current mandate holder submitted the report on the visit to the Human Rights Council at its eleventh session (A/HRC/11/36/Add.3).

13. The report highlighted the strong awareness and recognition at all levels of government and society regarding the challenges in the fight against racism in the United States. The former mandate holder commended the country for the comprehensive legal framework put in place since the adoption of the Civil Rights Act of 1964 and noted the important role played by the Supreme Court of the United States in the fight for civil rights. Finally, he also made reference to the vitality of civil society in the country, playing a key role in holding governments accountable to their obligations.

14. The report also focused on key areas of concern that need to be addressed in the future. The first set of challenges involves instances of direct discrimination and concrete racial bias, which is more pronounced with regard to law enforcement agencies. Particular reference was made in this respect to racial profiling, including in the fight against terrorism, and other aspects of the criminal and juvenile justice systems. Secondly, the report addressed cases of laws and policies that are prima facie non-discriminatory, but that have disparate effects for certain racial or ethnic groups, such as the practice of mandatory minimum sentences. Finally, the report described at length the overlap of poverty and race in the United States, which has a profound impact for minorities, particularly in areas such as education, housing and employment, creating a vicious cycle of marginalization and exclusion. This socio-economic marginalization of minorities has contributed to a slow process of de facto re-segregation in many areas of the society, directly challenging the goals of integration and equal opportunities.

15. To address these challenges, the former mandate holder made a number of recommendations to the authorities. These included the need to establish a bipartisan Commission to evaluate progress and failures in the fight against racism and the ongoing process of re-segregation; the reassessment of existing legislation for the identification of possible racial bias; and the enactment of comprehensive legislation prohibiting racial profiling.

2. Mission to Germany

16. The Special Rapporteur visited Germany from 22 June to 1 July 2009. He would like to express his sincere appreciation to the Government of Germany for its full openness and cooperation throughout the visit. A detailed report containing the observations and conclusions of the Special Rapporteur on the visit will be submitted to the Human Rights Council at its fourteenth session, in 2010.

17. In the press conference held in Berlin on 1 July 2009,[1] the Special Rapporteur recalled that the challenges faced by Germany were similar to those faced by many other European countries, and therefore Germany was a good measure of how Europe was doing in matters related to racism. He highlighted positive trends in

[1] The full text of the press release is available online from http://www2.ohchr.org/english/issues/racism/rapporteur/docs/PRelease_end_mission010709.pdf.

German society and political institutions regarding issues of racism. In that regard, reference was made to the adoption of the General Equal Treatment Act in 2006 and to the establishment of the Federal Anti-Discrimination Agency. The Special Rapporteur also noted with appreciation that the authorities at the highest level recognized that Germany was today a country of immigration. This recognition reflected a commitment of the authorities to address underlying challenges stemming from migration.

18. The Special Rapporteur acknowledged that much had been achieved in the fight against racism in the past few years, but much remained to be done. He identified two critical areas which deserved immediate attention. First, he recommended a broadening of the understanding of racism. While the understanding of racism by the society at large had been equated to right-wing extremism, the Special Rapporteur underlined the necessity to approach the question of racism from the standpoint of structures and institutions that facilitate the integration of migrants in German society. Secondly, he referred to the strong form of federalism in Germany and to the challenges concerning the transformation of Federal laws and programmes into concrete actions at the local level. The Special Rapporteur emphasized the need to ensure that local governments had effective legal and institutional frameworks that responded to the many challenges of the problem of racism.

19. In addition to these core issues, the Special Rapporteur addressed the necessity to strengthen the institutional and legal framework to fight racism and to fight extremist right-wing groups and parties. He also raised the situation of specific communities and the situation of refugees and asylum-seekers which was referred to as a major concern. The question of education, housing, employment and political participation of persons with a migrant background or coming from minority ethnic or religious backgrounds was also considered by the Special Rapporteur as deserving particular attention by the Government. He strongly recommended that special measures be taken to ensure an adequate representation of persons with a migrant background in State institutions — particularly in the areas of employment, education and the creation of political opportunities, including in the civil service — in order to correct existing imbalances and to offer such persons adequate opportunities to make a lasting contribution to German society.

3. Forthcoming mission to the United Arab Emirates

20. The Special Rapporteur would like to thank the Government of the United Arab Emirates, who have agreed to invite the Special Rapporteur for a country visit from 5 to 9 October 2009. This visit will constitute the first visit of a special procedure mandate holder to the United Arab Emirates and the Special Rapporteur is very much looking forward to engage in a constructive dialogue with the authorities on all matters related to racism, racial discrimination, xenophobia and related intolerance.

B. Press releases

1. International Day for the Elimination of Racial Discrimination

21. On the occasion of the International Day for the Elimination of Racial Discrimination, on 21 March 2009, the Special Rapporteur released a press statement calling for full engagement in the Durban Review Process.

22. He reaffirmed the continued relevance of the fight against all forms of racism and stated that displays of intolerance abounded, from small gestures in interpersonal relations to large-scale violence targeting people of different skin colour or ethnicity. In times of global financial crisis, the Special Rapporteur warned against intolerance, which tended to become even more pronounced, fostering racial, ethnic and xenophobic tensions.

23. The Special Rapporteur emphasized that the time was ripe for a renewed international engagement against racism and that the Durban Declaration and Programme of Action remained the most comprehensive framework of international, regional and national actions needed to counter racism. A successful Review Conference would empower all stakeholders across the world, providing them with additional tools to be employed in their daily fight against racism. He therefore called upon States as well as civil society organizations to participate constructively in the negotiations leading to the Review Conference in April 2009 and to devise consensual solutions that could make a positive impact on people's lives.

2. Situation of Roma in Europe

24. On 20 November 2008, a press statement was released jointly with the United Nations Independent Expert on minority issues in order to express their grave concern over the recent rise in anti-Roma sentiment and violent incidents in several European countries. The two experts underlined that effective action was required to stem the growing tide of hostility, anti-Roma sentiment and violence across Europe. In this regard, they referred to the necessity to fully use the criminal justice system in order to protect targeted populations. Both experts also stressed that such actions revealed serious and deep-rooted problems of racism and discrimination against Roma at the heart of modern Europe, and had to be addressed in the most vigorous manner and through the rule of law. They recalled that Governments must strongly condemn such actions. Moreover they must be committed to finding ways to create safe environments for all by carefully monitoring and strengthening their own anti-racism activities, through leadership and public education, by swiftly denouncing hate speech and prosecuting the racist and violent actions of others in society.

25. Furthermore, the two mandate holders expressed the view that the policies and actions of numerous States had been, at best, inadequate to resolve intolerable conditions of poverty, marginalization and exclusion experienced by the Roma minority in Europe. Policies such as finger-printing of Roma, abuse by police, and racist statements by senior public officials had contributed to creating a climate in which societal discrimination and racism were sustained and enhanced. The growing number of such incidents required both a national and Europe-wide response and the experts stressed the need for the European Union to send a strong message, which must be acted upon by Member States. International law, European directives and national policies must be strongly enforced by national Governments and at the

level of local government where, according to the experts, the message of anti-racism was not getting through.

C. Thematic issues addressed by the Special Rapporteur through his participation in conferences, seminars and other meetings

1. Incitement to racial or religious hatred

26. Since his last report to the General Assembly (A/63/339), the question of incitement to racial or religious hatred has been raised by the Special Rapporteur through various reports and statements which are summarized below.

27. At the ninth session of the Human Rights Council, the Special Rapporteur submitted, pursuant to Council resolution 7/19, a report drafted by his predecessor on "the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights" (A/HRC/9/12).

28. In the report, the analytical framework presented by the former mandate holder to the Human Rights Council in the past is summarized and updated. In particular, a clear call is made to Member States to shift the discussion in international forums from the idea of "defamation of religions" to the legal concept of "incitement to national, racial and religious hatred, hostility or violence", which is grounded in international legal instruments. In that regard, the report contains a detailed examination of the current normative framework on the question of incitement to hatred, showing that protection against this kind of hate speech has been crafted at length in international law, including in articles 19 and 20 of the International Covenant on Civil and Political Rights, and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

29. On 12 November 2008, the Special Rapporteur participated in a conference on "Human rights in culturally diverse societies: challenges and perspectives", organized by the Council of Europe. On that occasion, he addressed the issue of "hate speech", which is used as a convenient short term to describe the legal notion of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as contained in article 20 of the International Covenant on Civil and Political Rights.

30. In particular, the Special Rapporteur referred to the expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in October 2008. The seminar brought together a number of academics and experts, who identified the key challenges and put forward some recommendations. When applying articles 19 and 20 of the Covenant, they pointed to the need of a case-by-case approach, therefore taking into account, for instance, the history of violence or persecution against a particular ethnic or racial group, which can be a meaningful indicator of their vulnerability. Further, the experts were of the view that when article 20 of the Covenant was triggered, this generally indicated a failure of the State to fulfil other obligations, in particular the right to non-discrimination. Regarding the application of hate speech laws, the seminar also identified some objective criteria to avoid arbitrary application of these laws. Some of these criteria include: (a) the public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized; (b) any limitations on

freedom of expression should be clearly and narrowly defined and provided by law, and they must be necessary and proportionate to the objective they propound to achieve; (c) the least intrusive means insofar as freedom of expression is concerned should be used in order to prevent a chilling effect; and (d) the adjudication of such limitations must be made by an independent judiciary.

31. While arguing that hate speech laws are necessary and legitimate according to international standards, the Special Rapporteur cautioned against their subjective and overly broad application. More generally, he also insisted on the obligation of States to actively fight racism and discrimination. Fighting hate speech was, however, only one of several obligations States had to fight discrimination. Other obligations were contained in article 26 of the Covenant which stated that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground", including race, colour or national origin. Article 2 of the International Convention on the Elimination of All Forms of Discrimination provides an even higher standard of non-discrimination, including the need to adopt special measures.

32. In his statement, the Special Rapporteur recalled that the full implementation of the relevant international human rights standards was the most important defence to fight all manifestations of racism, including hate speech. He argued that hate speech was but a symptom of a more profound disease, which was racism and intolerance. There was therefore the need to attack these root causes, not only their external manifestation.

33. At the twelfth session of the Human Rights Council, the Special Rapporteur submitted, pursuant to Council resolution 10/22, a report on "the manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers" (A/HRC/12/38).

34. In view of the important developments that took place during the reporting period, the report takes stock of the ongoing conceptual debate on the issue of "defamation of religions" and incitement to religious hatred. In this regard, the Special Rapporteur refers to the above-mentioned report of the former mandate holder, the expert seminar organized by OHCHR on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights, as well as to the agreement reached in the outcome document of the Durban Review Conference.

35. In the report, a brief overview is offered of the information sent to the Special Rapporteur by the Organization of the Islamic Conference on "Islamophobic incidents" and by the European Union Agency for Fundamental Rights on the discrimination and racially motivated crimes experienced by Muslims in the European Union. In this regard, the Special Rapporteur distinguishes between intolerant mentalities, incitement to religious hatred, religious discrimination and violence perpetrated against members of religious or belief communities. In the same chapter, he emphasizes that, when discussing incitement to racial or religious hatred, the interrelatedness of international human rights standards should be taken into account. In particular, he refers to the interdependence and interrelatedness of articles 18, 19 and 20 of the International Covenant on Civil and Political Rights, as well as article 4 of the International Convention on the Elimination of All Forms of Discrimination. In this context, he extensively refers to a joint statement on "freedom of expression and incitement to racial or religious hatred" presented with the Special Rapporteur on the protection and promotion of the right to freedom of

opinion and expression and the Special Rapporteur on freedom of religion or belief at a side event during the Durban Review Conference.[2]

36. In the last chapter of his report, the Special Rapporteur makes a number of conclusions and recommendations, proposing a way forward in international efforts to combat incitement to racial or religious hatred. In this regard, he reiterates the recommendation of his predecessor to encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred. He also welcomes the consensus reached at the Durban Review Conference and recommends policymakers to rely on the robust and adequate language of the outcome document and to implement it domestically. Finally, he recommends that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech and stresses the need to protect members of religious or belief communities from violation of their right to freedom of religion or belief.

2. Racism and poverty

37. The issue of racism and poverty has been addressed by the Special Rapporteur in his first annual report submitted at the eleventh session of the Human Rights Council (A/HRC/11/36), as well as in the framework of a side event on "Discrimination and poverty: exclusion and solutions in the new millennium" organized on 21 April 2008 by OHCHR during the Durban Review Conference.

38. In the Special Rapporteur's view, a central dimension of the fight against racism lies around the overlap between two key social indicators: class and race or ethnicity. While the links between race and poverty have yet to be further elucidated, national data, when available, unambiguously show that racial or ethnic minorities are disproportionately affected by poverty. Poverty puts members of minorities in a vicious circle. The lack of education, adequate housing and health care transmits poverty from generation to generation and perpetuates racial prejudices and stereotypes in their regard. Based on the body of empirical work and country visits carried out by the mandate, as well as on academic and policy-oriented research on this topic, the Special Rapporteur notes that the socio-economic vulnerability of racial or ethnic minorities is generally the result of historical legacies. Indeed, slavery, segregation or apartheid served not only to dehumanize people, but also created structural imbalances that remain to this day. Moreover, these unjust imbalances are also a result of the inaction of Governments.

39. In order to address the disproportionate levels of poverty experienced by the members of racial or ethnic minorities, the Special Rapporteur emphasizes three overarching priorities: (a) the collection of ethnically disaggregated data; (b) the central obligation to non-discrimination; and (c) the need for the enactment of special measures towards groups that suffered from decades or centuries of discrimination.

40. While the Special Rapporteur is conscious of the arguments against the collection of ethnically disaggregated data, he is of the view that the lack of such data has most often prevented policymakers from devising specific and appropriate

[2] The full text of the joint statement of the three Special Rapporteurs is available online at www2.ohchr.org/english/issues/racism/rapporteur/docs/Joint_Statement_SRs.pdf.

public policies aiming at redressing racial or ethnic imbalances. For that reason, he encourages a shift away from the debate on whether or not to collect ethnically disaggregated data, to a discussion on how to best collect these data. In this respect, the Special Rapporteur proposes some key principles for the collection of ethnically disaggregated data that can help to overcome the concerns of many States: the right to privacy; the principle of self-identification; and the involvement of minority communities at every stage of the exercise.

41. The Special Rapporteur would like to recall that the central obligation of States not to discriminate is unambiguously contained in international human rights law. Such obligation is particularly important with regard to the full enjoyment of economic, social and cultural rights, which have a profound impact on the socio-economic situation of minority communities.

42. Whereas non-discrimination is essential to create a level playing field for different communities, the Special Rapporteur believes that non-discrimination on its own does not provide for the correction of imbalances which are the result of historical legacies, such as slavery and segregation. In this regard, there continues to be a need for the enactment of special measures, as provided for in article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination, towards groups that suffered from decades or centuries of discrimination, thus helping to transform the goal of integration and equal opportunities into a concrete reality for all.

43. In relation to the impact of the economic situation on racism, the Special Rapporteur also briefly addressed the possible negative consequences of the financial crisis on efforts to fight racism and xenophobia during the Wilton Park Conference on "Contemporary and future human rights challenges", held from 22 to 24 January 2009 in West Sussex, United Kingdom.

44. On that occasion, the Special Rapporteur warned that the economic slowdown forecast for the next years could contribute to the emergence of ethnic and racial tensions in areas where migrants live. He stated that such tensions often arose when there were problems in the economy as a whole, and in particular in the labour and housing markets. With soaring unemployment and decreasing salaries, some groups might try to manipulate public opinion to generate strong anti-immigration backlashes and to blame migrants for current economic problems. These xenophobic expressions were at times intertwined with racial prejudices and stereotypes, as migrants could often be differentiated based on their race or ethnicity.

45. The Special Rapporteur recalled that a set of measures was required to prevent the rise of such xenophobic feelings and their translation into policy. States had to be vigilant regarding their human rights obligations, in particular vis-à-vis migrants. In that regard, appropriate institutions and legislation were required to punish those who discriminated, incited or perpetrated acts of violence against foreigners or members of minorities. More broadly, political leaders had to be sensitive to the impact of racism, racial discrimination, xenophobia and related intolerance, reaching out to minorities and demonstrating constant vigilance regarding their human rights situation.

3. Genocide

46. On 21 January 2009, the Special Rapporteur participated in a seminar on the prevention of genocide organized by the Office of the United Nations High Commissioner for Human Rights. On that occasion, he recalled that genocide, ethnic cleansing and other war crimes were traditionally linked to the emergence of exclusionary ideologies based on race or ethnicity and that extreme forms of racism, often hidden under the guise of radical nationalism, could lead to unspeakable catastrophes. However, while it was clear that genocide was frequently accompanied by extreme forms of racism, the Special Rapporteur cautioned against sweeping causal statements. He highlighted that racism was a widespread and pervasive phenomenon, affecting countries in all regions of the globe, whereas genocide, on the other hand, had been confined to a limited number of cases which had taken place under specific circumstances.

47. Reflecting on the need to better understand the conditions under which racism leads to genocidal violence, the Special Rapporteur referred to the helpful efforts undertaken by the Committee on the Elimination of Racial Discrimination. The substantive work carried out by the Committee allowed for the identification of long-term and short-term factors leading to genocide. On the long term, the importance of addressing systematic discrimination against particular distinct groups was emphasized and early-warning signs helping to detect such systematic discrimination were identified by the Committee. Short-term factors were also indicated as being essential to explain how long-term causes were triggered into mass violence at particular times. Although a system of early warning was never fail proof, the Special Rapporteur stressed its absolute necessity against the crime of genocide. Such a system allowed identifying situations that should be placed on a "watch list" of countries at risk and also offered a sense of the long- and short- term measures required to overcome the problem.

48. While political solutions lay at the centre of these efforts, the Special Rapporteur underlined the set of human rights concerns which should also guide such political decisions, as they allowed for action on issues at the root causes of the conflict. Dealing with these root causes of ethnic conflict was considered by the Special Rapporteur as a fundamental strategy to prevent genocide. Indeed, the international community had often tried to remedy situations of conflict, while disregarding the real sources of the problem. As a consequence, racial or ethnic tensions remained long after a peace agreement was signed, only to lead to conflict recurring years later. An anti-racism and anti-discrimination approach was thus essential in post-conflict situations, particularly in post-genocide contexts, in order to ensure that such tragedies would not recur in the future. In particular, the Special Rapporteur stated that racial or ethnic fractures that opened during conflict needed to be addressed with broad programmes of national reconciliation that fostered inter-ethnic cooperation.

49. While national reconciliation must be a priority in a post-conflict situation, the Special Rapporteur also recalled that combating impunity was to remain on the top of the agenda. The investigation, prosecution and punishment of those responsible were an absolute necessity leading to a comprehensive and lasting reconciliation process. The culture of anti-impunity was at the core of the mandates of several international tribunals, which should be globally supported. Nonetheless, the Special Rapporteur considered that these international mechanisms were the last resort

option and that the domestic judiciary systems should bear the primary responsibility to prosecute and punish people who had incited to or participated in genocide. In conclusion, the Special Rapporteur strongly reiterated that the promotion and protection of human rights, democracy and rule of law at all times were the best defence against conflict, and also against genocide.

50. In addition to his above-mentioned individual statement, the Special Rapporteur contributed with seven other special procedures mandate holders to a joint statement,[3] which was delivered during the same seminar on the prevention of genocide.

51. Reflecting on effective strategies to prevent genocide and other mass atrocities, the eight special procedures mandate holders reaffirmed that owing to their independence, field activities and access to Governments and civil society, they constituted a useful instrument to collate and analyse in-depth information on serious, massive and systematic violations of human rights. They could also provide recommendations to the concerned Governments and the international community on the steps to be taken to defuse tensions at an early stage. Through their reporting to the General Assembly and the Human Rights Council, the special procedures endeavoured to contribute to a better understanding of and early warning on complex situations.

52. The eight special procedures mandate holders stressed the necessity for early warnings signals to reach the political and conflict-prevention bodies of the United Nations, in order to allow decision makers at the highest levels to take action with full knowledge of the facts on the ground. In that regard, it was underlined that one of the communication channels that special procedures could rely on more systemically was the Office of the Special Adviser on the Prevention of Genocide.

53. In conclusion, the eight special procedures mandate holders emphasized that prevention of genocide was an obligation of the international community and therefore constant vigilance by the United Nations was mandatory. At the same time, they also recalled that Member States had the primary responsibility to implement their international obligations. Ultimately, the best prevention against genocide or massive violence was to ensure respect for human rights, democracy and the rule of law, with particular attention to the principle of non-discrimination.

4. Discrimination based on descent

54. During the Durban Review Conference, the Special Rapporteur participated in a side event on "Communities empowered to resist discrimination and exclusion", organized by the International Movement against All Forms of Discrimination and Racism and Lutheran World Federation, on 22 April 2009.

55. Recalling that the issue of discrimination based on descent was addressed by special procedures mandate holders in their joint contribution to the preparatory process of the Durban Review Conference (A/CONF.211/PC/WG.1/5), the Special Rapporteur highlighted that the mandate holders had already expressed their serious concern about this form of discrimination.

[3] The joint statement by eight special procedures mandate holders is available online from www2.ohchr.org/english/events/RuleofLaw/docs/SProceduresJointStatement.pdf; see also A/HRC/10/25, paras. 44-50.

56. The Special Rapporteur referred to the estimated 250 million people around the world being at risk of violations of civil, political, social, economic and cultural rights, including violence, marginalization and discrimination, on the grounds of systems based on inherited status. Human rights violations could occur in a wide array of areas, including prohibition or limitations on the ability to alter inherited status, socially enforced restrictions on marriage outside the community, public and private segregation, including in housing and education, and access to public spaces and places of worship and public sources of food and water, limitation of freedom to renounce inherited or degrading occupations or hazardous work, as well as subjection to debt and bondage.

57. The Special Rapporteur recalled that since the 2001 World Conference against Racism, held in Durban, the issue of discrimination based on descent had been on the international agenda. Despite the objection of some States, the main human rights bodies working in the area of racism and discrimination had clearly stated that prohibition of this type of discrimination fell within the scope of existing instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. In that regard, the Special Rapporteur specifically referred to the Committee on the Elimination of Racial Discrimination, which concluded at its forty-ninth session, that "the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention". In addition, the Committee also stated that discrimination on the grounds of caste constituted a form of racial discrimination and that "the term 'descent' had its own meaning and was not to be confused with race or ethnic or national origin". More broadly, in its general recommendation No. 29 (2002) concerning discrimination on the grounds of descent, the Committee further clarified its position by "strongly reaffirming that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".

58. As such, the Special Rapporteur reaffirmed that the legal framework on discrimination based on descent is unambiguous. Yet, it remains to be implemented properly. Robust action was required from Governments in order to advance in the fight against discrimination based on descent. The vital first step in addressing this issue was for States to recognize that discrimination on the grounds of descent constituted a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Discrimination. In the absence of such recognition it would not be possible to effectively address the serious human rights violations and discrimination suffered by individuals and groups on grounds of caste and other systems of inherited status.

IV. Conclusions and recommendations

59. **In relation to the Durban Review Conference held from 20 to 24 April 2009, the Special Rapporteur hopes that the momentum gained during the review process will maintain its strength and that all pledges and commitments made in the outcome document of the Review Conference will be effectively implemented by States, which bear the primary responsibility in this respect. The Special Rapporteur recommends that concrete measures be identified at the domestic level and that a road map with realistic benchmarks be**

established by States in cooperation with their civil society for the implementation of the outcome document of the Conference.

60. Although some States chose not to participate in the Durban Review Conference, the Special Rapporteur calls on those States to nonetheless publicly express their support for the outcome document of the Review Conference and to commit to its implementation in order to fight racism, racial discrimination, xenophobia and related intolerance.

61. While measures need to be taken by States to fight incitement to racial or religious hatred, the Special Rapporteur would like to recommend that States refrain from adopting vague or overly broad restrictions on freedom of expression which have often led to abuse by the authorities and to the silencing of dissenting voices, particularly those of individuals and groups in vulnerable situations, such as minorities. Freedom of expression makes an essential contribution to the fight against racism and to the right to equality. It empowers individuals and groups in vulnerable situations to fight for their rights and allows them to provide a rational response to hate speech often targeting them.

62. The Special Rapporteur would like to recall that a global agenda at the national level against racism is the best way to effectively prevent hate speech. Although legislative measures are necessary, States should also resort to non-legislative measures, such as education and intercultural dialogue, in order to fight racism. In this regard, States should closely cooperate with their civil society in order to design, implement and evaluate the most appropriate and effective measures against racism.

63. In order to further clarify the existing links between race and poverty, the Special Rapporteur is of the view that it is necessary to collect ethnically disaggregated data. While he is fully aware of the arguments against the collection of such data, the Special Rapporteur recommends to shift from the debate on the need or not to collect ethnically disaggregated data to a thorough discussion on how to best collect them in order to comply with international standards and to avoid the misuse or manipulation of these data.

64. Owing to the potential adverse effects of the current financial and economic crisis on the efforts to fight racism and xenophobia, the Special Rapporteur recommends that States take appropriate and effective measures to prevent an eventual rise of xenophobic feelings, in particular vis-à-vis migrants who are in vulnerable situations. Special vigilance is indeed required in these times of economic turmoil and States should ensure that all necessary legislative and institutional safeguards are put in place in order to prevent a significant rise of xenophobia in their domestic society.

65. The Special Rapporteur believes that the most effective way to prevent genocide or massive violence perpetrated against a specific group of individuals is to ensure, at the national level, respect for human rights, democracy and the rule of law, with particular attention to the principle of non-discrimination. The same holds true in post-genocide or post-conflict situations. In this respect, the Special Rapporteur recommends that Governments take concrete measures aiming at fostering inter-ethnic cooperation so as to avoid the recurrence of ethnic conflicts.

66. **The establishment of an effective system of early warning is absolutely essential against the crime of genocide. It allows for the identification of situations which might become genocidal and provides a sense of the measures needed to counter the problems. In this regard, the Special Rapporteur would like to reaffirm its willingness to collaborate with the Office of the Special Adviser on the Prevention of Genocide.**

67. **In order to provide effective protection to individuals around the world being at risk of violations of civil, political, social, economic and cultural rights on the grounds of systems based on inherited status, the Special Rapporteur would like to encourage an international recognition that discrimination on the grounds of descent constitutes a form of racial discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination.**